

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

TAYLOR H., by and through her)	CIVIL NO. 09-00020 SOM-LEK
parents TODD H. and ELAINE)	
H.,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
DEPARTMENT OF EDUCATION,)	
STATE OF HAWAII,)	
)	
Defendants.)	
_____)	

**REPORT OF SPECIAL MASTER ON PLAINTIFFS'
SUPPLEMENTAL MOTION FOR COSTS**

Before the Court, is Plaintiff Taylor H.'s ("Plaintiff"), by and through her parents Todd H. and Elaina H. (collectively "Plaintiffs"), Motion for Reconsideration ("Motion"), filed on August 20, 2009.¹ Defendant Department of Education ("Defendant") filed its memorandum in opposition on September 3, 2009, and Plaintiffs filed their reply on September 17, 2009. The Court finds this matter suitable for disposition without a hearing pursuant to Rule LR7.2(d) of the Local Rules of Practice of the United States District Court for

¹ Although Plaintiffs caption their motion as one for reconsideration, the Court notes that Plaintiffs are seeking costs, among other things, that the Court previously indicated in its Report of Special Master on Plaintiffs' Motion for Attorneys' Fees and Costs, filed August 6, 2009, may be recoverable upon submission of proper documentation. To the extent the Motion seeks such costs, the Court construes it as a supplemental motion for costs.

the District of Hawaii ("Local Rules"). After reviewing the parties' submissions and the relevant case law, the Court HEREBY FINDS and RECOMMENDS that the Plaintiffs' Motion be GRANTED IN PART AND DENIED IN PART. The Court recommends that the district judge award Plaintiffs \$199.46 in costs.

BACKGROUND

On August 6, 2009, the Court filed its Report of Special Master on Plaintiffs' Motion for Attorneys' Fees and Costs ("Report"), finding and recommending that Plaintiffs be awarded \$23,424.60 in attorneys' fees and \$429.97 in costs, for a total award of \$23,854.57. The Report also recommended that Plaintiffs' request for costs in the amount of \$77.96 for commercial copying, \$59.50 in messenger service charges and \$75.00 in service fees, be denied without prejudice, subject to the submission of supplemental documentation in compliance with Local Rule 54.2(c).

In their Motion, Plaintiffs submit invoices substantiating the costs for commercial copying and service fees. [Motion, Exh. I to Decl. of Stanley Levin.] With respect to the messenger service charges, Plaintiffs indicate that they are only able to substantiate costs in the amount of \$46.50. [Id.] Plaintiffs also request additional attorneys' fees and costs in the amount of \$11,271.54, in connection with the preparing and filing of their original Motion for Attorneys' Fees and Costs

filed March 24, 2009. [Id., Exhs. J-M.]

In its opposition, Defendant notes, as this Court has, that Rule 54.2(c) is not the proper rule under which Plaintiffs' should seek the previously requested costs and the additional attorneys' fees and costs regarding the original Attorneys' Fees Motion. Defendants also object to the reasonableness of the additional attorneys' fees requested by Plaintiffs. Defendants do not, however, otherwise object to the invoices and other documentation submitted in support of Plaintiffs' original request for costs.

DISCUSSION

As explained in the Report, Plaintiffs are entitled to reasonable costs incurred as the prevailing party in the administrative proceeding and in the instant case. See 20 U.S.C. § 1415(i)(3)(B)(i)(I). Although Plaintiff failed to submit appropriate substantiation of certain costs that they were requesting, the Court specifically permitted them to cure such failure by submitting supplemental documentation. Upon review of the supplemental documents submitted, and there being no objection to such documents by Defendant, the Court finds and recommends that Plaintiff be awarded \$199.46 in costs.

With respect to Plaintiffs' request for additional attorneys' fees and costs in connection with the expenses incurred regarding the original Motion for Attorneys' Fees and

Costs, filed March 24, 2009, the Court notes that such fees and costs were not the subject of that motion, and that any such request should be brought under the proper federal and local rules. Therefore, the Court finds and recommends that Plaintiffs' request for additional attorneys' fees and costs be DENIED WITHOUT PREJUDICE. Plaintiffs, however, may file a motion for additional attorneys' fees and costs, and should do so by no later than October 23, 2009.

CONCLUSION

In accordance with the foregoing, this Court, acting as Special Master, HEREBY FINDS and RECOMMENDS that Plaintiffs' Motion, filed August 20, 2009, be GRANTED IN PART AND DENIED IN PART and that the district court award Plaintiffs \$199.46 in costs.

IT IS SO FOUND AND RECOMMENDED.

DATED AT HONOLULU, HAWAII, September 28, 2009.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States Magistrate Judge

**TAYLOR H., ET AL. V. STATE OF HAWAII; CIVIL NO. 09-00020 SOM-LEK;
REPORT OF SPECIAL MATER ON PLAINTIFFS' SUPPLEMENTAL MOTION FOR
COSTS**